

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS POWER,
Plaintiff,

Civil Division

Docket No. 2:17-CV-00154-MRH

v.

Hon. Mark R. Hornak

HEWLETT-PACKARD COMPANY,
Defendant.

AFFIDAVIT OF CHRISTOPHER G. BETKE
IN SUPPORT OF MOTION TO STRIKE EXPERT REPORTS

Christopher G. Betke, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years and I believe in the obligations of an oath.
2. I represent the Defendant, HP, Inc., incorrectly named as Hewlett-Packard Company's ("HP"), in the above-captioned lawsuit, and my representation of HP in this action commenced on or about January 18, 2017.
3. I assisted HP in the preparation of its Objections and Responses to the Plaintiff's Interrogatories and Requests for Production dated January 30, 2018.
4. In those Objections and Responses, in response to Plaintiff's Interrogatories 6-9, 13, 16, 17, and 24, which requested information concerning:

"the at issue laptop, lithium ion battery, laptop charger and power cord";

"the lithium ion batteries within the at issue laptop"; and

"the at issue laptop, lithium ion battery, charger."

HP objected, among other things, that:

"the artifact battery pack retained in evidence from the Power Notebook was not the original battery pack shipped with it, is not an HP-approved battery pack and is of unknown origin"; and

"the artifact battery pack retained in evidence from the Power Notebook was an after-market battery pack of unknown origin."

5. I attended the November 26, 2018, deposition of David Pipho, an HP electrical hardware engineer, and have reviewed the transcript of that deposition. Mr. Pipho testified as followed:

Q: For the at-issue notebook, is there an alarm or a warning on the screen that appears if a non-HP approved battery is being used?

A: I'm not sure.

Q: Sure. Are you aware that there are battery packs and cells that are not approved by HP that can fit into the at-issue laptop?

A: Yes, I am aware.

Q. Are you aware that there are hundreds of manufacturers of batteries out there where they make batteries that can fit into HP products?

A: I'm not aware of a number of, a quantity of manufacturers.

Q: I'm not asking for a specific number, but you are aware that there's a lot of them. Correct?

A: I won't speculate. There's likely more than one, yes.

Q: Does Hewlett-Packard in the manufacturing of their product --- manufacturers and designers of their product --- design their laptops, specifically the at-issue notebook, knowing that their consumers may possibly purchase battery packs that are non-HP approved?

A: To answer that last question, we design the notebook to interact specifically with HP approved battery packs. And I can't speculate or comment on what the behavior would be beyond that.

Tr. at 82, 107. Mr. Pipho was asked no other questions on this issue, although he was questioned extensively concerning the AC adaptor.

6. I attended the July 18, 2019 deposition of John Wozniak, who formerly oversaw battery development and qualification for HP, and have reviewed the transcript of his deposition. Mr. Wozniak testified as followed:

Q: Okay. And would the laptop communicate to the user HP approved battery was the laptop?

A: No.

Q: And why is that?

A: It wasn't --- in 2008 it was not industry standard. It wasn't --- just wasn't an industry standard.

Q: What was industry standard as far as informing users of whether an HP approved battery was in the laptop?

A: There wasn't one. There wasn't one.

Q. I just have like one or two more. So we talked about whether if you put a non HP approved battery pack into the laptop whether a warning system would pop up. And you said that wasn't the industry standard at the time? And my question is, did that technology exist back when this laptop was being designed and manufactured?

A. I don't know. That's a long time ago. This was not something in our radar at that time.

Tr. at 52-3, 67. Mr. Wozniak was asked no other questions on this issue, although he was questioned extensively concerning overcharging and short-circuiting of batteries original to HP.

Dated February 1, 2021 at Boston, Massachusetts.

/s/ Christopher G. Betke

Christopher G. Betke